

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
ASARCO, INCORPORATED,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 81-182

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.07 of Regulation I, came before the Pollution Control Hearings Board, David Akana (presiding), Nat W. Washington and Gayle Rothrock, at a formal hearing in Lacey, Washington, on April 14, 1982.

Appellant was represented by its attorney Michael R. Thorp; respondent was represented by its attorney Keith D. McGoffin. The proceedings were recorded by Duane W. Lodell.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a  
5 certified copy of its Regulation I which is noticed. Of particular  
6 interest in this matter are Sections 9.07, 1.07 and 3.29 thereof.

7 II

8 On June 1, 1981, appellant emitted sulfur dioxide from its  
9 facility at North 51st Street and North Baltimore in Ruston. The  
10 sulfur dioxide was recorded at about 10:00 a.m. at two air monitoring  
11 stations pertinent to this appeal. They are located south of the  
12 facility at North 26th and Pearl Streets. One monitor is operated by  
13 respondent, the other by appellant.

14 III

15 As a result of the concentrations recorded, respondent issued  
16 Notice of Violation No. 18166 on July 20, 1981. The notice alleged a  
17 violation of Section 9.07(a) of Regulation I by causing or permitting  
18 the emission of sulfur dioxide in concentrations and frequencies at  
19 respondent's monitor which exceeded the maximum allowable sulfur  
20 dioxide concentrations of 0.40 ppm for a sixty-minute period, from  
21 10:02 a.m. to 11:02 a.m. on June 1, 1981.

22 For the foregoing event, appellant was assessed a \$250 civil  
23 penalty (No. 5185) on July 22, 1981. Appellant paid the penalty.

24 IV

25 On October 7, 1981, respondent issued Notice of Violation

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 81-182

1 No. 18719 for the alleged violation of Section 9.07(a) for causing or  
2 permitting the emission of sulfur dioxide in concentrations and  
3 frequencies at appellant's monitor which exceeded the maximum  
4 allowable sulfur dioxide concentration of 0.40 ppm for a sixty-minute  
5 period, from 10:00 a.m. to 11:00 a.m. on June 1, 1981.

6 For the foregoing event, appellant was assessed a \$250 civil  
7 penalty (No. 5322) on October 21, 1981, which is the subject matter of  
8 this appeal.

9 V

10 Both appellant's and respondent's air monitors are "primary air  
11 mass stations" as defined by Section 1.07(jj). The monitors are  
12 located 17 feet apart. Appellant's monitor intake is located 15 feet  
13 off the ground. Respondent's monitor intake is located 15 feet 4  
14 inches off the ground.

15 VI

16 The two air monitors recorded sulfur dioxide emissions within the  
17 same air mass.

18 VII

19 Any Conclusion of Law which should be deemed a Finding of Fact is  
20 hereby adopted as such.

21 From these Findings, the Board comes to these

22 CONCLUSIONS OF LAW

23 I

24 Section 9.07 makes it unlawful "for any person to cause or permit  
25 the emission of sulfur dioxide from any premises which will result in  
26

1 concentrations and frequencies at a primary air mass station...that  
2 exceed [0.4 ppm concentration over a 60-minute period at any time]."

3 Section 3.29 provides for a \$250 civil penalty per day for each  
4 violation of Regulation I.

5 II

6 Appellant was charged with two violations of Section 9.07 on the  
7 same day. This case does not involve the violation of the terms and  
8 conditions of a variance or other order.

9 III

10 Appellant literally violated Section 9.07 on June 1, 1981, as  
11 alleged because the concentration recorded at each "primary air mass  
12 station" exceeded that allowed by regulation. However, the monitors  
13 sampled virtually the same air mass within "a relatively broad area"  
14 and the samples recorded were "representative of the general area."  
15 Section 1.07(jj). In effect, the two monitors, being only 17 feet  
16 apart, comprise but one "primary air mass station" (not withstanding  
17 their separate operation) for purposes of Section 9.07 and 3.29.  
18 Appellant has paid for the violation on June 1, 1981, once, and should  
19 not pay twice. Accordingly, the \$250 civil penalty (No. 5322) should  
20 be reversed.

21 IV

22 Any Finding of Fact which should be deemed a Conclusion of Law is  
23 hereby adopted as such.

24 From these Conclusions, the Board enters this  
25  
26

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
PCHB No. 81-182

ORDER

The \$250 civil penalty (No. 5322) is reversed.

DONE this 29th day of April, 1982, at Lacey,  
Washington.

POLLUTION CONTROL HEARINGS BOARD

David Akana

DAVID AKANA, Lawyer Member

Nat W. Washington

NAT W. WASHINGTON, Chairman

Gayle Rothrock

GAYLE ROTHROCK, Vice Chairman